

SENATE BILL REPORT

ESSB 6402

As Passed Senate, February 16, 2010

Title: An act relating to the consolidation of permit exempt wells.

Brief Description: Concerning the consolidation of permit exempt wells.

Sponsors: Senate Committee on Environment, Water & Energy (originally sponsored by Senator Sheldon).

Brief History:

Committee Activity: Environment, Water & Energy: 1/27/10, 2/02/10 [DPS].

Passed Senate: 2/16/10, 46-2.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That Substitute Senate Bill No. 6402 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Honeyford, Ranking Minority Member; Delvin, Fraser, Marr, Morton, Oemig, Ranker and Sheldon.

Staff: Karen Epps (786-7424)

Background: A person who holds a valid groundwater permit or certificated right may consolidate that right with a groundwater right for an exempt well. The consolidation is to be done in the form of an amendment to the permit or right issued by the Department of Ecology (Ecology) and does not affect the priority of either of the rights being consolidated. Notice of an application for such a consolidation must be published as provided for applications for new rights to water.

To issue an amendment for the consolidation, Ecology must determine that (1) the exempt well taps the same body of groundwater as the well governed by the permit or certificate; (2) use of the exempt well will be discontinued when the consolidation is approved; (3) legally enforceable agreements have been entered to prohibit the construction of another exempt well to serve the area previously served by the discontinued exempt well, and the agreements are binding upon subsequent owners of the land; (4) the exempt well or wells will be properly decommissioned; and (5) other existing rights will not be impaired.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The amount of the water to be added to the consolidated permit or certificate from the exempt well is the average withdrawal from the exempt well for the most recent five-year period, but not more than 5,000 gallons per day. Up to this limit, the amount is to be not less than 800 gallons per day per residential connection or an alternative minimum amount set by Ecology in consultation with the Department of Health (Health). Ecology must presume that an amount identified by the applicant as being the average withdrawal from the well is accurate if the applicant establishes that it is consistent with average amounts of water used for similar uses in the general area of the exempt well.

Ecology must favor approval of such a consolidation if the requirements for consolidation are met and the discontinuance of the exempt well is consistent with an adopted coordinated water system plan, an adopted comprehensive land use plan, or other comprehensive watershed management plan. Ecology must give priority to reviewing and deciding applications for consolidation. It must make its decision within 60 days of the end of a 30-day comment period following the second publication of the notice by the applicant or within 60 days of the date that compliance with the State Environmental Policy Act (SEPA) is completed, whichever is later. The applicant and Ecology may agree to extend the time for making a decision.

Summary of Engrossed Substitute Bill: Until December 31, 2015, consolidation may occur between a water right holder and someone using a permit exempt well if the exempt well either taps or is in connection with the same body of groundwater in which the holder has a water right to withdraw groundwater. An exempt well does not need to be decommissioned under consolidation if the exempt well is to be used as a groundwater monitoring well.

If an existing, publicly owned and operated group A or group B water system does not have adequate permitted or certificated water rights or a sufficient number of connections and the proposed new development could obtain water from a permit exempt well, then the water system may consolidate with its water right an additional quantity of water not to exceed 5,000 gallons per day under the following requirements:

- the water system must publish notice in the county or counties in which the water system and the proposed new development are located for two consecutive weeks;
- the water system must provide evidence of publication to Ecology, Health, and the local government with land use authority over the proposed new development (local government);
- Ecology must review public comments from the 30 day review and comment period;
- Ecology must determine whether water is legally available for purposes of consolidation and determine whether the proposed consolidation will impair existing rights including instream flows;
- the local government must ensure that the proposed consolidation is consistent with an adopted coordinated water system plan, or the comprehensive plan, or a comprehensive watershed management plan;
- the water system must amend its water system plan and receive approval from Health;
- legally enforceable agreements must be entered to prohibit the construction of an exempt well to serve the area of the proposed new development;
- Ecology must consult with Health, and the local government to ensure compliance with this section prior to deciding on applications;

- Ecology must process these applications within 60 days of the end of the comment period or within 60 days of the date on which SEPA compliance is completed;
- in no case may the quantity of water consolidated exceed either 5,000 gallons per day or 14 new connections and the quantity of water withdrawn must comply with rules adopted by Ecology and ordinances adopted by the local government;
- the water system must separately meter both existing connections and new connections;
- any letter that water is available to serve the proposed new development utilizing this procedure must be provided to Ecology, Health, and the local government;
- a water system may do multiple consolidations but only until a total of 14 connections or 5,000 gallons a day has been consolidated; and
- after beneficial use has occurred, the water system must obtain a final proof examination in order to obtain a certificate.

Any determination by Ecology regarding consolidation applications is appealable to the Pollution Control Hearings Board.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute As Heard in Committee:

PRO: This bill evolved from discussions among the public utility districts (PUDs) in which there were some situations where an existing water system wanted to provide service to a new development and the new development wanted to receive service, but the PUD was at or near the capacity of its water rights. The landowner had to rely on an exempt well for water. This bill allows a group A water system to consolidate the exempt water right in order to serve the adjacent development. The concept in the bill provides various side boards so that this tool is only available if that water system could not serve the development without the additional quantity. Additionally, the bill would require the PUD to meter the water use. There would also need to be review of impairment before the consolidation occurs. This bill is designed to allow a PUD to provide service in lieu of more exempt wells going in next door to the PUD.

CON: There are insufficient sideboards around impairment. It is unclear how the new language would work with the existing language. There needs to be clarification around how the impairment analysis would take place in this situation.

OTHER: This bill seeks to eliminate the proliferation of exempt wells. There is an advantage to having the new development hook up to the well-managed publicly-owned water system. The proliferation of small systems is a public health and environmental problem. There is concern about impairment after the development is already in place. This is an expansion of existing groundwater code. There is a lack of information that the goals that this bill puts forward will be achieved. There needs to be clarification as what quantity

is included and what type of use is covered. There is confusion over the coverage area described in the bill as within or adjacent. It is important to not encourage development in an area that cannot support that development. There needs to be some way of certifying that a permit exempt well would be tapping physically and legally available water. There needs to be assurances that the development project is a genuine proposal and not a way to game the system. There would also need to be assurances that such small developments are not merely sequential and related pieces of a larger development proposal. It appears that a group A water system will only be allowed to do this for a total quantity of 5,000 gallons per day forever. It might be time to remove the current limitation that the consolidating utility have a water right for the same body of public groundwater.

Persons Testifying: PRO: Bill Clarke, John Kounts, Washington Public Utility Districts Association; Kathleen Collins, Washington Water Policy Alliance.

CON: Dawn Vyvyan, Yakama Nation.

OTHER: Denise Clifford, Department of Health; Darcy Nonemacher, American Rivers; Ken Slattery, Department of Ecology.